

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

**WISCONSIN UFCW UNIONS & EMPLOYERS
HEALTH PLAN, PAUL WHITESIDE
and WILLIAM SEEHAFER**
Plaintiffs,

v.

Case No. 04C0113

**WOODMAN'S FOOD MARKET, INC.
Defendants.**

ORDER

On December 2, 2004, I entered summary judgment in favor of plaintiffs determining that defendant is responsible for withdrawal liability to the Wisconsin United Food and Commercial Workers, Unions and Employers Health Plan (the "Plan"). On April 15, 2005, plaintiffs moved for summary judgment as to the amount of withdrawal liability, seeking a ruling that the Plan's determination that defendant was required to pay a delinquent contribution in the amount of \$49,465, plus attorneys' fees, interest and liquidated damages, was reasonable as a matter of law. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

On May 27, 2005, defendant notified the court that it had "decided not to contest the summary judgment motion filed by plaintiffs in this matter regarding damages." Accordingly, there is no triable issue of material fact as to the reasonableness of the Plan's determination that defendant is required to pay withdrawal liability in the amount of

\$49,465. Furthermore, there is no triable issue of material fact as to the reasonableness of the Plan's determination that defendant is required to pay attorneys' fees and costs the Plan has incurred during this litigation in the amount of \$20,088.43, as well as \$14,097.53 in interest and \$9,918.00 in liquidated damages. Therefore, defendant is required to pay to the Plan a total of \$93,568.56

Therefore, for the reasons stated,

IT IS ORDERED that plaintiffs' motion for summary judgment on damages is **GRANTED**.

IT IS FURTHER ORDERED that defendant will pay the Plan damages in the amount of \$93,568.96 on or before September 2, 2005.

Dated at Milwaukee, Wisconsin, this 1 day of August, 2005.

/s _____
LYNN ADELMAN
District Judge